

## **DETAILED ACTION**

This office action is in response to applicant's communication of 1/16/2008.

Currently amended claims 1-7,9-14,16-35,37-54 are pending and rejected below.

### ***Response to Arguments***

Applicant's arguments filed 1/16/2008 have been fully considered but they are not persuasive. Applicant's argue that the amendments of the sleeve is "configured for attachment to the tool, the stretchable sleeve formed of compliant, expandable textured non-slip material and adapted to stretch over the tool and contract on to the tool" as well as the "sleeve integrally formed with the conduit" is not shown in the prior art.

It is examiners position that the sleeve is "configured for attachment to the tool, the stretchable sleeve formed of compliant, expandable textured non-slip material and adapted to stretch over the tool and contract on to the tool" as well as the "sleeve integrally formed with the conduit" is shown in the prior art namely Diamond.

Applicant is reminded that during examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969).

Diamond discloses a sleeve (16) as shown in figure 2, that is integrally formed with the conduit (12) and if formed of a stretchable, expandable and resilient plastic material (see column 2 lines 40-65).

The elements disclosed in the prior art of record are fully capable of satisfying all structural, functional, spatial, and operational limitations in the amended claims, as currently written, and the rejection is made and proper. See rejection discussion below. It is recommended that applicant amend the claims to greater define where the applicant's inventions novelty lies, such as describing the sleeve in more detail rather than just the properties of the material it is formed from.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5-13, 17-19, 22, 25-28, 31-35, 38-40, 43, 46-50, 53-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Diamond (U.S. Patent Number 5,624,393).

Diamond discloses a surgical irrigation device for use with a surgical tool (10 in figure 1), comprising: an expandable textured sleeve configured for attachment to the tool (16); a flexable tube conduit (12) having a distal tip and a proximal end, the conduit mounted on the sleeve (as shown in figure 1); and a flow control clamping member (18) mounted on the sleeve (16) and associated with the conduit (12) for controlling fluid flow through the conduit, and the distal tip comprises a positionable malleable nozzle portion, and a compressible reservoir bladder (22) with compressing means (hand or

gravity). It is examiners position that the distal tip would be fully capable of being bendable, malleable, and is “adapted for repeated bending to retain an angle of orientation without kinking or breaking” (since it is described in the prior art as “Flexible”) and that the sleeve (id above) would be capable of being stretchable (since they are described in the prior art as being “resilient”) Examiner is of the posision that the definition of “resilient” could be returning to the original form or position after being bent, compressed, or stretched.

The surgical device of Diamond discloses the clamping member is configured to enable selective clamping of the tube to control volume flow to the nozzle portion (see paragraph at column 2 line 61). Diamond further comprises a connector (24,16 or connector near element 10) at the proximal end of the conduit.

The Diamond art discloses a surgical irrigation device (Figure 1, 2) for use with a surgical tool, the device comprising: means for holding and releasing fluid (22, 18); means for conducting fluid from the fluid holding and releasing means (22 to 14 by 18); means for releasably attaching the conducting means to the tool (12, 18); and means for controlling flow of fluid through the fluid conducting means (20, 18).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 20-21, 23-24, 41-42, 44-45, 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond in view of McPhee (U.S. Patent Number 5,429,607).

Diamond discloses the claimed invention except for the compressible member comprises an elastomeric syringe bulb urged into a compressed condition by an elastomeric resilient band member. McPhee teaches that it is known to use a compressible member (as shown in figures 1, 4, 9, 12) comprises an elastomeric syringe bulb (10, 12, 16) urged into a compressed condition by an elastomeric resilient band member (26, 62) as set forth in paragraphs beginning at column 2 through column 3 to provide an elastomeric powered IV actuation device that is convenient to use and inexpensive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the irrigation system as taught by Diamond with a compressible member comprises an elastomeric syringe bulb urged into a compressed condition by an elastomeric resilient band member as taught by McPhee since such a modification would provide the irrigation system with a compressible member comprises an elastomeric syringe bulb urged into a compressed condition by an elastomeric resilient band member for providing an elastomeric powered IV actuation device that is convenient to use and inexpensive.

Claims 3, 14, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond in view of Carlson et al. (US 6,090,356). Diamond discloses the claimed invention except for the “malleable wire attached to a flexible portion of the tube to retain the position and direct fluid flow from the conduit”. Carlson teaches that it is known to use malleable wire attached to a flexible portion of the tube as set forth in

paragraphs beginning at column 1 line 26 and column 2 line 39 to line 62 to provide the user to "more precisely direct the flow of irrigation fluid ". It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the surgical device as taught by Diamond with a malleable wire attached to a flexible portion of the tube as taught by Carlson since such a modification would provide the surgical device with a malleable wire attached to a flexible portion of the tube for providing the user to "more precisely direct the flow of irrigation fluid ".

Claims 4, 16, 30, 37, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond in view of Brass. (US 3,065,759). Diamond discloses the claimed invention except for the "split nozzle". Brass teaches that it is known to use a split nozzle as set forth in paragraphs at column 2 lines 51-60 to provide a location specific outlet for one or more connections. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Diamond with a "split nozzle" as taught by Brass, since such a modification would provide the system with a split nozzle for providing a location specific outlet for one or more connections.

### ***Claim Objections***

Claims 1, 9,13,27,34, 47 and 4 are objected to because of the following informalities: Appropriate correction is required.

Claim 4 recites the limitation "the nozzle portion comprises..." in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

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Concerning claims 1, 9, 13, 27, 34, 47, the term "compliant" in the newly added amendment is a relative term which renders the claim indefinite. The term "compliant" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Appropriate Correction is required for both Objections.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571)272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Kevin C. Sirmons/  
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